

संख्या: 192 / कार्मिक-2 / 2004

प्रेषक,

श्री नृप सिंह नपलच्याल,  
प्रमुख सचिव,  
उत्तरांचल शासन।

सेवा में,

समस्त प्रमुख सचिव/सचिव,  
उत्तरांचल शासन।

समस्त विभागाध्यक्ष,  
उत्तरांचल।

समस्त मण्डलायुक्त/जिलाधिकारी,  
उत्तरांचल।

कार्मिक अनुभाग-2

देहरादून: दिनांक: 06 फरवरी, 2004

विषय:- राज्याधीन सेवाओं में अनुसूचित जाति/ अनुसूचित जनजाति  
के व्यक्तियों की आरक्षण का लागू देने के संबंध में।

महोदय,

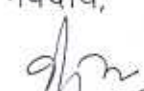
उपर्युक्त विषयक मुझे यह कहने का निदेश हुआ है कि उत्तर प्रदेश, पुर्नगठन अधिनियम 2000 की धारा 24 एवं 25 से कमशः अनुसूचित जाति एवं अनुसूचित जनजाति के लिए राष्ट्रपति का आदेश 1950 में संशोधन करके उत्तरांचल राज्य के संबंध में अनुसूचित जातियां तथा अनुसूचित जनजातियां प्रख्यापित की गयी हैं। प्रायः यह प्रश्न शासन को संदर्भित किया जाता है कि उत्तर प्रदेश राज्य के मूल निवासी जो उत्तरांचल राज्य में लम्बे समय से रह रहे हैं तथा अपने मूल निवास के राज्य में वे अनुसूचित जाति/अनुसूचित जनजाति के वर्ग में सम्मिलित हैं, उत्तरांचल राज्य में आकर लम्बे समय से निवास करने पर क्या उन्हें अनुसूचित जाति/अनुसूचित जनजाति वर्ग में होने का लाभ मिलेगा? इस संबंध में संविधान के अनुच्छेद 341 एवं 342 से स्पष्ट है कि एक राज्य का अनुसूचित जाति/अनुसूचित जनजाति का व्यक्ति दूसरे राज्य में वह जाति/जनजाति उसी नाम से अनुसूचित जाति अथवा अनुसूचित जनजाति प्रख्यापित होने पर भी उस व्यक्ति की अनुसूचित जाति अथवा अनुसूचित जनजाति वर्ग में गणना उस राज्य में नहीं की जायेगी। इस संबंध में मा० उच्चतम न्यायालय द्वारा उत्तर प्रदेश पब्लिक सर्विस कमीशन इलाहाबाद

प्रति संजय कुमार सिंह व उत्तर प्रदेश राज्य प्रति संजय कुमार सिंह, 2003  
लैब.आई.सी. 3134 में व्यवस्था दी है। इस संबंध में मा0 उच्चतम् न्यायालय के  
निर्णय के संदर्भित अंश संलग्न किये जा रहे हैं।

इस संबंध में मुझे यह कहने का निदेश हुआ है कि अनुसूचित जाति  
अथवा अनुसूचित जनजाति वर्ग का दावा करने वाले व्यक्ति के मूल निवास के  
संबंध में मा0 उच्चतम् न्यायालय द्वारा दी गयी व्यवस्था के अनुसार ही अग्रेत्तर  
कार्यवाही सुनिश्चित कराने का कष्ट करें।

संलग्नक—यथोपरि।

भवदीय,


  
(नृप सिंह नमलच्याल)  
प्रमुख सचिव।

संख्या /कार्मिक-2/2004 तददिनांकित

प्रतिलिपि:— सचिव, लोक सेवा आयोग, उत्तरांचल, हरिद्वार को सूचनार्थ एवं  
आवश्यक कार्यवाही हेतु प्रेषित।

संलग्नक—यथोक्त।

आज्ञा से,

  
(सुरेन्द्र सिंह रावत)  
अपर सचिव।

1. It is not in dispute that Naga tribe is not specified as one of the Scheduled Tribes in the State of U.P. The respondent claimed that his forefathers were residents of old Ngaulong village of Kohima District in Nagaland and they initially migrated to Chhapra in Bihar and the father of the respondent shifted his residence to Allahabad and after rendering service in the Army, settled down at Allahabad. The respondent, pursued his studies in Allahabad. Based on the certificates issued by the Nagaland authorities, the Tehsildar, Sadar, Chial Tehsil, Allahabad issued a certificate on 18-1-1996 to the effect that the respondent "has been accorded recognition as Scheduled Tribe Naga as per the Scheduled Tribes Order of 1970 relating to Nagaland."
2. The question arising in this case is no longer *res integra*. Almost the same question was considered in *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra v. Union of India* ((1994) 5 SCC 244). The following question arose for consideration:

1994 AIR SCW 3305
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- "Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Castes and/or Scheduled Tribes in State B?"
3. The Constitution Bench answered that question in the negative. Interpreting Arts. 341 and 342, the Court observed:  
 ".....What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified....."
  4. After referring to another decision of the Constitution Bench in *Marri Chandra Shakhari Raw v. Dean, Seth G.S. Medical College* ((1990) 3 SCC 130). Ahmadi, J. Speaking for the Court observed thus:  
 "We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or Backward Classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in



another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State, the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purpose of the constitution." This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Arts. 341 and 342 of the constitution."

5. The same view was taken in a recent decision in *Municipal Corporation of Delhi v. Veena*, (2001) 6 SCC 571, though it was a case of OBCs. Suffice it to quote the following passage occurring in that judgment.

2001 Lab IC 2895; 2001 AIR SCW 3014;  
AIR 2001 SC 2749, para 6

".....The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the date for specification may also be entirely different.".....(per Rajendra babu,J.)

6. Reliance was placed by the respondent's counsel on the Government of India, Home Ministry's Circular dated 25-11-1982 which enables the concerned authorities of the State to which the Scheduled Tribes migrated, to issue the S.C. and S.T. certificates. This Circular and the later clarification were also referred to in Action Committee case (*supra*) and the Court observed thus:

(1994 AIR SCW 3305)

".....By this clarificatory order forwarded to Chief Secretaries of all States/Union Territories, the only facility extended was that the prescribed authority of the State/Union Territory to which a person had migrated was permitted to issue the certificate to the migrant on production of the genuine certificate issued to his father by the prescribed authority of the State of the father's origin provided that the prescribed authority could always enquire into the matter through the State of origin if he entertained any doubt. The certificate to be so issued would be in relation to the State/Union Territory from which the person concerned had migrated and not in relation to the State/Union Territory to which he had migrated. Therefore, the migrant would not be entitled to derive benefits in the State to which he had migrated on the strength of such a certificate. This was reiterated in a subsequent letter dated 15-10-1987 addressed to Smt. Shashi Misra, Secretary, Social Welfare, etc. in the State of Maharashtra. In Paragraph 4 of the letter it was specifically stated:

"Further, a Scheduled Caste person, who has migrated from the State of his origin, which is considered to be his ordinary place or residence after the issue of the first presidential Order, 1950, can get benefit from the State of his origin and not from the State to which he has migrated."

It will thus be seen that so far as the Government of India is concerned, since the date of issuance of the communication dated 22-3-1997, it has firmly held the view that a Scheduled Caste/Scheduled Tribe person who migrates from the State of his origin to another State in search of employment or for educational purposes or the like, cannot be treated as a person belonging to the Scheduled Caste/Scheduled Tribe of the State to which he migrates and hence he cannot claim benefit as such in the latter State."

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